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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 267

UNITED STATES OF AMERICA, PETITIONER

v.

SEATTLE-FIRST NATIONAL BANK, A NATIONAL BANKING ASSOCIATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 55–76) is reported in 44 F. Supp. 603. The opinion of the Circuit Court of Appeals (R. 93–94) is reported in 136 F. 2d 676.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 24, 1943 (R. 94–95). The petition for a writ of certiorari was filed on August 17, 1943, and granted on October 11, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTION PRESENTED

Respondent (a national bank) and a state bank consolidated under the charter of respondent by written agreement therefor, ratified by their respective shareholders and approved by the Comptroller of the Currency in accordance with the National Banking Act. Legal title to all corporate securities and realty held in the state bank's name, in its own right and in fiduciary capacities, was thereafter held by respondent. Did the transaction involve a taxable transfer of the securities and realty under the stamp-tax provisions of the Revenue Act of 1926, as amended?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in the Appendix, *infra*, pp. 21–27.

STATEMENT

Respondent, known prior to December 28, 1935, as First National Bank of Seattle, entered into a written agreement on November 26, 1935, with the Spokane and Eastern Trust Company, hereinafter called the state bank, signed by the directors of each, providing for the consolidation of the two banks under respondent's charter and the corporate name of Seattle-First National Bank (R. 43–50). The agreement provided that (R. 49–50)—"This consolidation shall become effective when it shall have been ratified and confirmed by the affirmative vote of the holders of at least two-thirds

of the shares of stock, at the time outstanding, of" both banks, "and the Comptroller of the Currency * * * shall have issued his formal certificate under the seal of his office approving such consolidation."

The state bank owned real estate, including its banking premises, as well as corporate stocks and bonds, to all of which it held legal title as a part of its corporate assets. It also held in trust certain stocks and bonds, the legal title to which was vested in it as trustee, executor, administrator, guardian, or in other fiduciary capacities. (R. 77.)

Section 5 of the agreement provided, in part, as follows (R. 29):

> All assets of each association at the date of consolidation shall pass to and vest in the consolidated association, and the consolidated association shall be responsible for all of the liabilities of every kind and description of each of the consolidating associations.

The shareholders met and ratified the agreement, and on December 28, 1935, Acting Comptroller of the Currency Awalt issued a certificate of approval, reciting that it appeared the directors and shareholders of both banks had complied with the Act of Congress, approved November 7, 1918, as amended, and therefore the banks had been consolidated under the charter of the First National Bank of Seattle and under the corporate title of Seattle-First National Bank, with an authorized capital of $8,000,000 (R. 16–18).

The findings in the pretrial order, expressly approved by counsel for the respective parties, state (R. 14):

> That the foregoing proceedings were authorized by Section 34 (a), Title 12, U. S. C. A., and resulted in the consolidation of the trust company into the plaintiff Seattle-First National Bank pursuant to the above statute, and accordingly there was effected by the agreement of November 26, 1935, and the shareholders' ratification thereof, followed by approval of the Controller of the Currency, a transfer of legal title to all corporate securities and real estate, legal title to which was formerly held in the name of the Spokane and Eastern Trust Company, either in its individual capacity or as a fiduciary in various capacities. No documentary stamps were purchased or affixed with respect to the transfer of legal title to such corporate securities and realty. Subsequently, a deputy collector examined the records of the bank, and as a result, documentary stamps in the amount of $1,631.48 were purchased and affixed to the appropriate records.

This suit was brought on October 17, 1941, to recover the above tax, $1,631.48,[1] a penalty of $100, and interest (R. 2–6). The United States

[1] The $1,631.48 tax comprised $500 paid with respect to the transferred realty (R. 5, 19–20), $457.60 with respect to securities formerly owned by the state bank in its own right (R. 5, 21–22), and $673.88 with respect to securities held in trust (R. 5).

filed an answer admitting parts of the complaint (R. 7–11). A pretrial hearing resulted in the entry of an order embodying material findings of fact (R. 12–15), and the introduction of documentary exhibits, upon which the case was tried. The District Court made further findings which are a repetition of the first ten paragraphs of the complaint (R. 76–80). An opinion was filed (R. 55–76) in which the District Court stated that the decision in *United States* v. *Merchants Nat. Tr. & Sav. Bank*, 101 F. 2d 399 (C. C. A. 9), compelled it to hold that a tax was not due with respect to the securities held in trust and by analogy that a tax was likewise not due with respect to the securities which the state bank had owned beneficially (R. 62, 65). The court stated, however, that except for the compulsion of the *Merchants Nat. Bank* case it would hold the tax properly collected (R. 71). With respect to the tax on the transfer of real estate, the District Court held that the problem was different but the tax was not due (R. 72). Judgment was accordingly entered for respondent for the tax of $1,631.48 with interest (R. 82).[2] The Circuit Court of Appeals held that the case was in all respects governed by its earlier decision in the *Merchants Nat. Bank* case, and affirmed the judgment (R. 93–95).

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[2] Recovery was denied for the $100 penalty, which was paid in compromise of a threatened criminal prosecution (R. 79), on the ground that the compromise was a final settlement of the penalty (R. 75).

URGED

SPECIFICATION OF ERRORS TO BE ~~USED~~

The Circuit Court of Appeals erred:

1. In failing to hold that the transactions involved deliveries or transfers by the state bank to respondent of the real estate and securities owned outright, as well as of the securities to which it held mere legal title in fiduciary capacities, within the stamp-tax provisions of the Revenue Act of 1926, as amended.

2. In holding that the transactions involved were not subject to the stamp-tax provisions of the Revenue Act of 1926, as amended.

3. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

This Court in construing the statute in question has noted its comprehensive terms and ruled that its scope is not to be restricted by technical refinements. In this case the consolidation agreement between the respondent and the state bank expressly provides that all assets of the state bank at the date of consolidation *shall pass to* the consolidated association, in consideration of stock in the consolidated association, or cash at the option of the shareholders of the state bank. This agreement was approved by the directors and stockholders of the state bank. The national banking act under which the consolidation was effected specifically provides that no deed or other transfer is necessary to vest title to the property

of the state bank in the national bank. Accordingly it would seem clear that under the circumstances of this case there were transfers of legal title to the securities, whether owned beneficially or held as a fiduciary, and to the real estate from the state bank to the respondent. Therefore the transfers were subject to the stamp tax under the express terms of the statute.

The Treasury Regulations support this conclusion and the weight of authority in similar and analogous cases is to the same effect.

ARGUMENT

THE TRANSFERS OF SECURITIES AND REAL ESTATE FROM THE STATE BANK TO THE RESPONDENT BY VIRTUE OF THEIR CONSOLIDATION WERE TAXABLE TRANSFERS WITHIN THE MEANING OF SECTION 800, SCHEDULE A-3, 8 AND 9 OF THE REVENUE ACT OF 1926, AS AMENDED

1. *The securities.*—Section 800, Schedule A-3 of the Revenue Act of 1926, as amended (Appendix, *infra,* pp. 21-22), imposes a stamp tax on transfers of legal title to any shares of stock or certificates, "whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such share, certificate * * * or not)."

Section 800, Schedule A-9 of the Revenue Act of 1926, as amended (Appendix, *infra,* pp. 22-23),

imposes a stamp tax on all transfers of legal title to bonds, whether made by any assignment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not).

The comprehensiveness of this language has been given literal application by this Court. In applying the statute to transactions necessarily involved in short sales in *Provost* v. *United States*, 269 U. S. 443, this Court said (p. 458):

> It [the statute] evidenced a purpose not only to tax all sales or agreements to sell which had been previously taxed, but to extend the taxing provision to all transfers of legal title to shares or certificates whether technical sales or not. * * *

In *Raybestos-Manhattan Co.* v. *United States*, 296 U. S. 60, this Court upheld a stamp tax [3] upon the receipt by the stockholders of shares in a new corporation resulting from a reorganization, and in its opinion this Court said (pp. 62, 63):

> The stock transfer tax is a revenue measure exclusively. Its language discloses the general purpose to tax every transaction whereby the right to be or become a shareholder of a corporation or to receive any certificate of any interest in its property is surrendered by one and vested in another. * * *
>
> * * * * *

[3] This was in addition to the tax on the original issue of the stock, liability for which was conceded (296 U. S. 60, 62).

> The reach of a taxing act whose purpose is as obvious as the present is not to be restricted by technical refinements. * * *

In *Founders General Co.* v. *Hoey*, 300 U. S. 268, this Court upheld the imposition of a stamp tax upon the transfer of stock from a stockholder to his nominee, and in its opinion said (p. 275) that—

> * * * we are not to look beyond the Act for further criteria of taxability.

The circuit courts of appeals have also emphasized the broad language of the statute. In *Weil* v. *United States*, 115 F. 2d 999 (C. C. A. 2), certiorari denied, 313 U. S. 574, the court said (p. 1002):

> The Supreme Court construed the statute imposing the transfer tax literally in *Raybestos-Manhattan, Inc.*, v. *United States*, 296 U. S. 60 * * * and *Founders General Corp.* v. *Hoey*, 300 U. S. 268 * * * and was altogether strict in subjecting the transfers to a tax.

See also *City Bank Farmers Trust Co.* v. *Hoey*, 125 F. 2d 577, 578 (C. C. A. 2); *Niagara Hudson Power Corp.* v. *Hoey*, 117 F. 2d 414, 416 (C. C. A. 2), certiorari denied, 313 U. S. 571; *Cliffs Corp.* v. *United States*, 103 F. 2d 77, 79, 80 (C. C. A. 6); *Koppers Coal & Transportation Co.* v. *United States*, 107 F. 2d 706, 708 (C. C. A. 3).

In this case, the consolidation or merger[4] effected transfers of legal title to the securities, formerly held by the state bank either in its own name or as a fiduciary,[5] to respondent. The agreement expressly provides that all assets of each party at the date of consolidation *shall pass to* the consolidated association (R. 29, 47). The record shows that the agreement of consolidation was submitted to a special meeting of the board of directors of the state bank on November 26, 1935, at which time the agreement for consolidation was read and a resolution was passed authorizing the state bank to enter into the agreement and its officers to execute such agreement, and calling a special meeting of stockholders on December 24, 1935, for the purpose of ratifying and confirming

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[4] Section 3 of the Act of November 7, 1918, as amended (Appendix, *infra*, pp. 23–24) under which the consolidation or merger was effected, provides for a "consolidation" in which the "constituent" banks shall be "merged into and continued in the consolidated national banking association" which shall "be deemed to be the same corporation as each of the constituent institutions." The language, speaking of both consolidation and merger, is inconclusive as to whether the reorganization is a consolidation or merger, but as the constituent institutions continue in the form of the surviving corporation instead of expiring to be replaced by a new corporation the reorganization resembles a true merger rather than a true consolidation. *Hofheimer* v. *Seaboard Citizens Nat. Bank*, 154 Va. 392, 397, 153 S. E. 656; see 15 Fletcher *Cyclopedia Corporations*, pp. 7–12, 308.

[5] The reach of the tax is not restricted to transfers of beneficial interests. *Founders General Co.* v. *Hoey*, *supra*, at p. 274.

the agreement (R. 23–36). Another resolution was passed by the board of directors appointing a committee to certify the acceptability of the assets to be contributed by each of the merging banks (R. 37). The record also shows that the stockholders of the state bank at the special meeting held on December 24, 1935, ratified and confirmed this agreement (R. 38–53). In these circumstances, it would seem to be clear that there were transfers of legal title to the securities of the state bank at the time of consolidation or merger and that such transfers are subject to stamp tax under the express terms of Section 800, Schedule A–3 and 9.[6]

The Treasury Regulations support this conclusion. Article 34 (r) of Treasury Regulations 71 (Appendix, *infra*, p. 25) provides that upon a merger, the transfer of stock owned by a corporation which is merged into another corporation from the name of the first to the name of the second corporation, is subject to the tax.[7] We

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[6] Under Section 3 of the 1918 Act as amended (Appendix, *infra*, pp. 23–24) also, the effect of the consolidation or merger was to transfer the property to the national bank.

[7] As noted in footnote 4, *supra*, p. 10, the instant reorganization resembles a merger more than a consolidation so it would appear to come precisely within this regulation. The case does not rest on this, however; a regulation stating a merger to be a taxable transfer was doubtless deemed necessary because in a true merger the merging corporations continue in the surviving corporation (Fletcher, *op. cit.* footnote 4, p. 10), thus laying the foundation for a technical argument against there being a "transfer." In a true consolida-

need not now contest the decision (*City Bank Farmers Trust Co.* v. *Hoey, supra*) that this regulation applies only to stock *beneficially* owned by the corporation, for with respect to the stock held in trust by the state bank and transferred to respondent, Article 34 (b) of Treasury Regulations 71 (Appendix, *infra*, p. 25) provides that the transfer of stock *by* trustees is subject to the tax.

Under Article 120 of Treasury Regulations 71 (Appendix, *infra*, p. 27), the Regulations relating to transfers of stocks are controlling in respect of transfers of bonds.

The court below held, however, in reliance upon its earlier decision in *United States* v. *Merchants Nat. Tr. & Sav. Bank*, 101 F. 2d 399, that these transfers were exempt because they resulted "wholly by operation of law" within the meaning of Article 35 (r) (Appendix, *infra*, p. 26). The court reasoned that because no deed, assignment or other instrument was executed, because the certificates were not endorsed[*] and there was not any delivery or change of possession other than that which may be implied from the consol-

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tion, however, the old corporations expire and a new one appears (*id.*) so the existence there of a transfer is by contrast *a fortiori* (see *Niagara Hudson Power Corp.* v. *Hoey*, 117 F. 2d 414 (C. C. A. 2) certiorari denied, 313 U. S. 571), thus obviating the need for an interpretative regulation.

[*] The record does not show that the certificates were not endorsed.

idation, the transfers occurred by operation of law. But inasmuch as the directors and stockholders of both banks acted upon the consolidation agreement, the consolidation or merger was effected by the act of the parties and not by operation of law. The fact that there was no deed or other instrument to transfer the property in question is immaterial (*Raybestos-Manhattan Co.* v. *United States, supra*), because Section 800, Schedule A–3 and 9, expressly imposes the tax on transfers of legal title whether made upon any paper or memorandum *or other evidence of transfer.* In this case the agreement of consolidation which was approved by the directors and ratified by the stockholders was the memorandum or other evidence of transfer (R. 23–53). Cf. *Raybestos-Manhattan Co.* v. *United States, supra.* That no formal assignment is necessary is shown by the following authorities: *Raybestos-Manhattan Co.* v. *United States, supra; Weil* v. *United States,* 115 F. 2d 999 (C. C. A. 2), certiorari denied, 313 U. S. 574; *Koppers Coal & Transportation Co.* v. *United States,* 107 F. 2d 706 (C. C. A. 3); *Niagara Hudson Power Corp.* v. *Hoey,* 117 F. 2d 414 (C. C. A. 2), certiorari denied, 313 U. S. 571; *State Street Trust Co.* v. *Hassett,* 134 F. 2d 156 (C. C. A. 1); *City Bank Farmers Trust Co.* v. *Hoey,* 125 F. 2d 577 (C. C. A. 2); and *Cliffs Corp.* v. *United States,* 103 F. 2d 77 (C. C. A. 6).

The decisions of other circuit courts of appeals support our contention that mergers and consolidations do not occur wholly by operation of law.[9] In *City Bank Farmers Trust Co.* v. *Hoey, supra,* a trust company holding stock in trust[10] was merged under the banking law of New York with another trust company, and legal title to the stock held in trust was transferred to the other company. The court held that there was a transfer of the stock held in trust under Section 800, Schedule A–3, of the Revenue Act of 1926, as amended. *Niagara Hudson Power Corp* v. *Hoey, supra,* involving the consolidation of two corporations under the New York stock corporation law, is to the same effect. In that case the court said (p. 416):

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[9] *Weil* v. *United States, supra,* which carries the exemption accorded by the Regulations to transfers by operation of law to, and perhaps even beyond, the farthest permissible extent, will serve for present purposes to illustrate the difference between a taxable transfer and one by operation of law. A take-over by the New York State Superintendent of Insurance, later succeeded by the Mortgage Commission, was held an exempt transfer by operation of law. A subsequent transfer of the assets (securities) by the Mortgage Commission to new trustees selected by the investors on the consent of two-thirds, was held not to be by operation of law and therefore to be taxable.

[10] With respect to stock held by the merged trust company as custodian, the court held that there was no taxable transfer. A similar ruling was made in *State Street Trust Co.* v. *Hassett,* 134 F. 2d 156 (C. C. A. 1). In this case none of the securities involved was held as custodian.

> Indeed, it is said, a transfer is inconceivable, for there were no instruments of transfer, nor was there any moment of time at which a transferor and a transferee were co-existent. But in legal jargon a change of ownership, terminating rights and other relations in one entity and creating them in another, is the essence of "transfer," * * *.

In *State Street Trust Co.* v. *Hassett,* 134 F. 2d 156 (C. C. A. 1), two state banks merged under the law of Massachusetts and one of the banks transferred to the other securities which it held both in its own right and in a fiduciary capacity. The transfers were held subject to the documentary stamp taxes under Section 800, Schedule A–3 and 9, of the Revenue Act of 1926, as amended.

Koppers Coal & Transportation Co. v. *United States, supra,* involved the consolidation of two corporations under the law of Delaware. In that case the transfer of stock owned by one of the corporations to the surviving corporation was held a taxable transfer under Section 800, Schedule A–3, of the Revenue Act of 1926, as amended. In that case the court said (p. 708):

> In short, the underlying property of the constituent corporations is transferred to the resultant corporation upon the carrying out of the consolidation or merger as provided by Section 59.
>
> Such a transfer of title is within the express language of Schedule A (3) of Sec-

> tion 800 and is precisely the example given in Article 34 (r) of Treasury Regulations 71. The transfer of the stock from Koppers Coal & Transportation Company to C. C. B. Smokeless Coal Company was not "wholly by operation of law" since the voluntary act and participation of the constituent companies was required in order to effect the merger or consolidation.

See also *Cliffs Corp.* v. *United States,* 103 F. 2d 77 (C. C. A. 6), and *Becker* v. *Bank of Commerce Liquidating Co.,* 102 F. 2d 633 (C. C. A. 8), certiorari denied, 308 U. S. 578.

The *Merchants Nat. Bank* case, *supra,* erroneously relied upon technicalities of California law to support the conclusion that the transfers resulted wholly by operation of law. The fact that a state may treat a certain transaction as being by "operation of law" does not control the application of a Federal Revenue Act. *Rogers* v. *Helvering,* No. 66, decided December 6, 1943; *Burnet* v. *Harmel,* 287 U. S. 103, 110; *Lyeth* v. *Hoey,* 305 U. S. 188, 193; *Weil* v. *United States, supra; Niagara Hudson Power Corp.* v. *Hoey, supra; Cliffs Corp.* v. *United States, supra; Becker* v. *Bank of Commerce Liquidating Co.,* 102 F. 2d 633 (C. C. A. 8), certiorari denied, 308 U. S. 578; *State Street Trust Co.* v. *Hassett, supra; City Bank Farmers Trust Co.* v. *Hoey, supra.*

The statute authorizing the consolidation of respondent and the state bank provides in part that upon such a consolidation the consolidated asso-

ciation "shall be deemed to be" the same corporation as each of the constituent institutions. This Court has referred to the consolidation as accomplishing a transfer and has decided that the consolidated association cannot act in the name of one of its constituents as an executor without applying to the proper tribunal to be substituted for the constituent. *Ex parte Worcester Nat. Bank,* 279 U. S. 347. In any event what is "deemed to be" the situation for banking purposes does not foreclose an inquiry into the realities of the situation for tax purposes. See *Old Colony R. Co.* v. *Commissioner,* 284 U. S. 552, 562. This taxing act is "not to be restricted by technical refinements." *Raybestos-Manhattan Co.* v. *United States, supra,* at p. 63.

In the *Merchants Nat. Bank* case the court below rested its decision upon the ground that the exemption of these transfers was justified by Article 35 (h) of the Treasury Regulations. (Appendix, *infra,* p. 25). That provision deals with transfers from the name of a deceased or resigned trustee to the name of a substituted trustee "appointed in accordance with the terms of the original trust agreement." The decision below relies upon the *Merchants Nat. Bank* decision, but does not specifically mention why it extended that decision to transfers of beneficially owned securities and real property. Neither of the cases actually involved a deceased or resigned trustee, but the *Merchants Nat. Bank* case held that Article 35 (h)

is not to be strictly construed, but instead is to be given a "plain commonsense" meaning broad enough to include the change of trustees which occurs upon a consolidation. The Second Circuit in the *City Bank Farmers Trust Co.* case disagreed with such an approach to the problem, and held (p. 579) that it had "no power to extend by analogy such a regulation [11] under a statute which itself is to be strictly construed." [12] We submit that the *City Bank Farmers Trust Co.* decision correctly interprets the regulations and that the exemptions in the Regulations themselves represent the utmost degree of magnanimity which the statute justifies and therefore must be strictly confined to the fields which they cover.

In any event there is a clear distinction between a transfer "from the name of a deceased or resigned trustee to the name of a substituted trustee appointed in accordance with the terms of the original trust agreement" and a transfer which results from a consolidation or merger. The latter is a transfer for its own business reasons from one professional trustee to another, wholly voluntary and hence a far cry from the transfers by operation of law which Article 35 (h) specifically states it means to exempt.

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[11] The court was there considering Treasury Regulations 71, as in effect in an earlier year, 1931. The language of the 1932 edition of the Regulations involved here is identical.

[12] Accord, *State Street Trust Co.* v. *Hassett*, 134 F. 2d 156 (C. C. A. 1).

2. *The real property.*—With respect to the real estate transferred by the state bank to respondent, Section 800, Schedule A–8, of the Revenue Act of 1926, as amended (Appendix, *infra*, p. 22) imposes a stamp tax on a deed, instrument, or writing whereby any lands or other realty sold shall be transferred or conveyed to the purchaser. In determining whether property was "transferred" the same principles should apply as in the case of the securities. And the agreement of consolidation, an instrument in writing, transferred the real estate, thus satisfying the requirements of Section 800, Schedule A–8, of the Revenue Act of 1926, as amended, and making clear that the transfer of the real estate was not made wholly by operation of law.

Since the statute refers in terms to land "sold" to a "purchaser," the question remains whether respondent was a purchaser under the circumstances of this case. The transfer of property, including realty, from the state bank to respondent was made in consideration of stock or cash, depending upon the election of the stockholders of the state bank (R. 30, 48). Article 89 of Treasury Regulations 71 (Appendix, *infra*, pp. 26–27) provides that stock in a corporation is a valuable consideration for the transfer of real property. While respondent is an association, not a corporation, it comes within the statutory definition of corporation in Section 1111 (2) (Appendix, *infra*, p. 23) of the Revenue Act of 1932. Since there

was a change of ownership, we submit that respondent is a purchaser within the meaning of the statute.

In *Carpenter* v. *White,* 80 F. 2d 145 (C. C. A. 1), certiorari denied, 297 U. S. 720, a business trust and a corporation conveyed by deed all of their realty to another business trust organized to absorb the properties and the business of the two units, which received in return a pro rata portion of shares in the new business unit. The court held that a taxable transfer occurred under Section 800, Schedule A–5, of the Revenue Act of 1924, which corresponds to Section 800, Schedule A–8, of the Revenue Act of 1926, as amended. The instant case should, we submit, be similarly decided.

CONCLUSION

The decision of the court below, which is contrary to the weight of authority, incorrectly applied the statute and the regulations and accordingly should be reversed.

Respectfully submitted.

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DECEMBER 1943.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 800. On and after the expiration of thirty days after the enactment of this Act there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, * * * * * *

SCHEDULE A.—STAMP TAXES

1. [as amended by Section 721 of the Revenue Act of 1932, c. 209, 47 Stat. 169] Bonds of indebtedness. On all bonds, * * *.

2. [as amended by Section 722 of the Revenue Act of 1932] Capital Stock (and similar interests), issue: On each original issue, * * *.

3. [as amended by Section 723 (a) of the Revenue Act of 1932] Capital stock (and similar interests), sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates mentioned or described in subdivision 2, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer

or sale (whether entitling the holder in any manner to the benefit of such share, certificate, interest, or rights, or not), on each $100 of par or face value or fraction thereof of the certificates of such corporation * * *, 4 cents, * * * * * *

8. [as added by Section 725 of the Revenue Act of 1932, and as amended by Section 212 of the National Industrial Recovery Act, c. 90, 48 Stat. 195, and as amended by Pub. Res. No. 36, c. 333, 49 Stat. 431] Conveyances: Deed, instrument, or writing, delivered on or after the 15th day after the date of the enactment of the Revenue Act of 1932 and before July 1, 1937 (unless deposited in escrow before April 1, 1932), whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof, 50 cents. * * *

9. [as added by Section 724 (a) of the Revenue Act of 1932, and as amended by Section 212 of the National Industrial Recovery Act, and as amended by Pub. Res. No. 36] Bonds, etc., sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the instruments mentioned or described in subdivision 1 and of a kind the issue of which is taxable thereunder, whether made by any assign-

ment in blank or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale (whether entitling the holder in any manner to the benefit of such instrument or not), on each $100 of face value or fraction thereof, 4 cents: * * *.

Revenue Act of 1932:

Section 1111.—

* * * * *

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

Act of November 7, 1918, c. 209, 40 Stat. 1043, Sec. 3, as added by the Act of February 25, 1927, c. 191, 44 Stat. 1224, Sec. 1, and as amended by the Banking Act of 1933, c. 89, 48 Stat. 162, Sec. 24, and the Banking Act of 1935, c. 614, 49 Stat. 684, Sec. 331:

SEC. 3. That any bank incorporated under the laws of any State, or any bank incorporated in the District of Columbia, may be consolidated with a national banking association located in the same State, county, city, town, or village under the charter of such national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and which agreement shall be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of such State bank if the laws of the State where the same is organized so require,

at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting * * * * * * Upon such a consolidation, or upon a consolidation of two or more national banking associations under section 1 of this Act, the corporate existence of each of the constituent banks and national banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and the consolidated association shall be deemed to be the same corporation as each of the constituent institutions. All the rights, franchises, and interests of each of such constituent banks and national banking associations in and to every species of property, real, personal, and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such consolidated national banking association without any deed or other transfer; and such consolidated national banking association, by virtue of such consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such constituent institution at the time of such consolidation * * *. [12 U. S. C. § 34a.]

Treasury Regulations 71 (1932 ed.):

ART. 34. *Sales or transfers subject to tax.*—The following are examples of transactions subject to the tax:

(a) The sale or transfer of shares of stock, whether or not represented by certificates.

(b) The transfer of stock to or by trustees.

* * * * *

(r) Upon a merger, the transfer of stock owned by a corporation which is merged into another corporation from the name of the first to the name of the second corporation, such a transfer being effected by the act of the parties and not wholly by operation of law.

* * * * *

(t) The transfer of legal title to stock irrespective of whether or not the transferee receives any beneficial interest therein, except as provided in article 35 (k).

(u) Transfer of stock from old firm to new firm succeeding to its business where personnel is different.

* * * * *

ART. 35. *Sales or transfers not subject to tax.*—The following are examples of transactions not subject to the tax:

* * * * *

(h) The transfer of stock from the name of a deceased or resigned trustee to the name of a substituted trustee appointed in accordance with the terms of the original trust agreement, which is a transfer resulting wholly by operation of law.

* * * * *

(r) Transfers of shares or certificates of stock which result wholly by operation of law are not subject to the tax. Transfers of this character are those which the law itself will effect without any voluntary act of the parties, such as transfer of stock from decedent to executor.

* * * * * *

ART. 36. *Memoranda of sales.*—Every person who makes an agreement to sell or transfers title to shares of stock by delivery of certificates assigned in blank, including every person who lends stock, shall, as a part of such transaction, promptly make and deliver to the buyer or borrower a bill or memorandum of such sale, agreement to sell, or loan, duly signed by the seller or lender or his agent, to which the requisite stamps shall be affixed and canceled, which bill or memorandum shall show the date of the transaction, the names of the seller and buyer, or lender and borrower, and the name and number of shares of stock, and the tax paid thereon, and in the case of a transaction made on an exchange shall bear a number upon the face thereof and have printed or written in ink thereon the words "Subject to the Revenue Act of 1926, as amended, and regulations made in accordance therewith." No more than one such bill or memorandum made by the seller or lender on any given date shall bear the same number. However, no single transaction or purchase or sale that is made upon an exchange by one member to another member shall be required to be evidenced by more than one stamped memorandum.

ART. 89. *Stock in corporation a valuable consideration.*—Stock in a corporation is a

valuable consideration for the transfer of real property.

ART. 120. *Basis of tax.*—The tax accrues at the time of making the sale or agreement to sell or memorandum of sale, or delivery of, or transfer of the legal title to, the bonds, regardless of the time or manner of the delivery of the bonds or agreement or memorandum of sale. The provisions of articles 34 to 39, both inclusive, of these regulations, relating to sales or transfers of stock, are controlling also in respect of sales or transfers of bonds, insofar as consistent with the provisions of Schedule A–9 and insofar as not inapplicable to the matter of sales or transfers of bonds.

Loans of bonds and the return of bonds loaned are subject to tax.

A bill or memorandum, such as provided in article 36, is required in respect of every sale or transfer of a bearer bond.

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